Office - Supreme Court, U.S.
FILED
DEC 17 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-556

IN THE

Supreme Court of the United States

October Term, 1982

PRESS-ENTERPRISE COMPANY, a California Corporation,
Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF RIVERSIDE,
Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

ALBERT GREENWOOD BROWN, JR.,
Defendant.

Brief in Opposition to Petition for Writ of Certiorari to the Court of Appeal of the State of California, Fourth Appellate District, Division Two.

GLENN ROBERT SALTER,
JOYCE ELLEN MANULIS REIKES,
3535 Tenth Street,
Suite 300,
Riverside, Calif. 92501,
(714) 787-2421,
Attorneys for Respondent.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

TABLE OF CONTENTS

Page

Reasons for Denying the Writ 1

I.

The Questions Presented by Petitioner Were Recently Considered by This Court; Nothing New is Presented by Petitioner to Justify the Granting of This Writ .. 1

II.

All of the Venirepersons Should Be Named as Real Parties in Interest to This Petition 3

III.

The Respondent Court May, in Appropriate Circumstances, Close Jury Voir Dire and Transcripts Thereof to the Public 3

A. The Respondent Court Considered and Satisfied the Test of Richmond 4

B. The Decision in This Case Complies With the Rationale of Hovey in Helping to Ensure a Fair Trial 5

Conclusion 6

TABLE OF AUTHORITIES

Cases	Page
Globe Newspaper Co. v. Superior Court, (1982) ___ U.S. ___, 73 L. Ed. 2d 248, 102 S. Ct. 2613	2, 3, 5, 6
Hovey v. Superior Court, (1980) 28 Cal. 3d 1, 168 Cal. Rptr. 128, 616 P. 2d 1301	5
People v. Williams, (1981) 29 Cal. 3d 392, 174 Cal. Rptr. 317, 628 P. 2d 869	3
Press-Enterprise Company, et al. v. Superior Court, Supreme Court of the United States, Case No. 81-1022	1, 2
Richmond Newspapers, Inc. v. Virginia, (1980) 448 U.S. 555, 65 L. Ed. 2d 973, 100 S. Ct. 2814	2, 3, 4, 5, 6
Constitution	
United States Constitution, First Amendment	3, 5, 6
United States Constitution, Sixth Amendment	6

No. 82-556

IN THE

Supreme Court of the United States

October Term, 1982

PRESS-ENTERPRISE COMPANY, a California Corporation,
Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE,
Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

ALBERT GREENWOOD BROWN, JR.,
Defendant.

Brief in Opposition to Petition for Writ of Certiorari to the Court of Appeal of the State of California, Fourth Appellate District, Division Two.

REASONS FOR DENYING THE WRIT.

I.

THE QUESTIONS PRESENTED BY PETITIONER WERE RECENTLY CONSIDERED BY THIS COURT; NOTHING NEW IS PRESENTED BY PETITIONER TO JUSTIFY THE GRANTING OF THIS WRIT.

In the October 1981 Term of this Court, Petitioner, together with Copley-Press, Inc. petitioned this Court for a Writ of Certiorari in the case of *Press Enterprise Company,*

et al. v. Superior Court, Case No. 81-1022. That Petition involved the issue of the closure of the jury *voir dire* in a criminal case with death-penalty potential. That Petition, as well as a subsequent Petition for Rehearing, were denied.

Although the Petition in Case No. 81-1022 dealt only with the issue of the closure of the jury *voir dire*, the Petition for Rehearing raised and argued the issue of the sealing of the *voir dire* transcript and with specific reference to the case underlying the instant Petition, that is, *People v. Albert Greenwood Brown*, Riverside Superior Court, Case No. CR 18104. (See Petition for Rehearing From Order Denying Writ of Certiorari, Case No. 81-1022, pages 2, 3 and 4).

A fair reading of the instant Petition reveals nothing not already advanced and argued in the previous case except for the reference to the intervening decision in *Globe Newspaper Co. v. Superior Court* (1982) .... U.S. ...., 73 L. Ed. 2d 248, 102 S. Ct. 2613 and the bare and unsubstantiated claim that Petitioner's counsel has conducted an "informal survey" in Los Angeles and Orange Counties which indicates to Petitioner's counsel that the death-qualifying phase in each capital case is "automatically" closed to the public and the press. Whatever may or may not be the practice in other counties, such circumstances hardly justify the granting of the Petition in the instant case. Moreover, the closure of the jury *voir dire* in *People v. Brown* was not in any sense automatic. It was done only after the trial court had applied the three-pronged standard set forth in *Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 65 L. Ed. 2d 973, 100 S. Ct. 2814. Similarly, the sealing of the *voir dire* transcript was done only after two public hearings were held on the matter, one during the trial and one after its conclusion.

In short, Petitioner has already presented to this Court in a prior Petition the very case and questions raised in this Petition. Nothing new has been presented to justify the granting of this Petition and thus it should be denied.

II.

ALL OF THE VENIREPERSONS SHOULD BE NAMED AS REAL PARTIES IN INTEREST TO THIS PETITION.

At no time, either in the motions brought in the trial court or in any of the petitions brought in the appellate courts, has Petitioner named as real parties in interest the venirepersons who were called and examined in *People v. Brown*.

All of the venirepersons who were examined on *voir dire* appeared in court as part of their civic duty. All were sworn to answer truthfully the questions put to them by the trial court and counsel for the parties, and the range of questions was certainly potentially broad since under *People v. Williams* (1981) 29 Cal. 3d 392, 174 Cal. Rptr. 317, 628 P.2d 869, voir dire examination in criminal cases is allowed to extend as far as trial counsel's discretion may wish to take it.

However, although venirepersons are obligated to be forthright and complete in their responses, it should not mean that they are forced to leave their rights at the door of the courthouse. The venirepersons also have competing rights which should be raised. The proper parties to raise them are the venirepersons and thus, a Petition, such as the instant one, which excludes them, should not be considered.

III.

THE RESPONDENT COURT MAY, IN APPROPRIATE CIRCUMSTANCES, CLOSE JURY VOIR DIRE AND TRANSCRIPTS THEREOF TO THE PUBLIC.

Petitioner concedes that under *Richmond* and *Globe*, its First Amendment right of access to criminal trials is not absolute. Both of those cases set forth certain standards

which must be considered before closure can be permitted, standards which were considered by the trial court in the instant case.

A. The Respondent Court Considered and Satisfied the Test of *Richmond*.

The *Richmond* case sets forth a three-pronged standard to be satisfied by the trial court in ruling on whether to close a trial to the public, as follows:

(1) That there are findings on the record to support such closure;

(2) That alternative solutions were considered; and

(3) That the trial court recognized the right under the Constitution for the public and the press to attend the trial.

In the present case, these standards were met.

On October 19, 1981, Petitioner made an oral and written motion in the trial court to allow public access to the jury *voir dire*. Petitioner requested release of the jury *voir dire* transcript by motion on December 30, 1981, and again by an ex parte application on February 23, 1982. All of these motions were fully briefed and argued in open court.

The first standard was clearly met as the Respondent Court made specific findings on the record to support closure of the jury *voir dire* and the order not to release the transcripts. These are seen not only in the transcript of the hearings but also in the Minute Order of February 23, 1982.

The second standard was also satisfied. Although Petitioner failed to suggest any alternative to closure, the Respondent Court did employ an alternative to total closure by allowing public access to the general portion of the jury *voir dire*, and did have a transcript of the *voir dire* prepared so that it could be released if and when it was appropriate to do so.

The third standard was also clearly met. Petitioner's motions in the trial court discussed at length the public's First Amendment right of access to all phases of the trial including jury *voir dire*. The fact that the public was allowed access to the general portion of the jury *voir dire* evidences that the Respondent Court recognized the rights of the public and the press of access.

Finally, it should be noted that although the *Globe* decision postdates the hearings had in the instant case, it is clear from the record that the closure of the jury *voir dire* as to selected issues and the decision not to release the transcripts at the present time were not made in any arbitrary or mandatory fashion. The decisions were made only after the rights of the respective parties in interest, including the public and the press, were fully considered. Clearly, based on the specific facts of this case the three-pronged standard of *Richmond* was clearly satisfied.

B. The Decision in This Case Complies With the Rationale of Hovey in Helping to Ensure a Fair Trial.

The philosophy of *Hovey v. Superior Court* (1980) 28 Cal. 3d 1, 168 Cal. Rptr. 128, 616 P. 2d 1301, is that "trial courts must be especially vigilant to safeguard the neutrality, diversity and integrity of the jury to which society has entrusted the ultimate responsibility for life or death." (*Hovey*, 28 Cal. 3d at p. 81)

Hovey reaffirms the criminal defendant's right to a fair trial, in part by the sequestration of the jury, and in part by permitting potential jurors to be examined individually and out of the presence of other jurors on death-qualifying issues. The rationale underlying *Hovey* is that: (1) potential jurors will be more candid in their responses to *voir dire* examination if they are examined out of the presence of

other jurors; and (2) potential jurors tend to be influenced by the responses and comments of other potential jurors.

The decisions of the trial court in *People v. Brown* attempt to balance the competing interests of the First and Sixth Amendments. As long as it is recognized that in appropriate cases the criminal defendant's Sixth Amendment right to a fair trial, especially in a death-penalty potential case, can outweigh the First Amendment rights of the public and the press, then the decisions made by the Respondent Court in the instant case are certainly proper.

It is important to note the fact that following the conclusion of the criminal trial, the jurors were free to be interviewed by the press. Furthermore, although Petitioner contends that the *voir dire* transcript was sealed "permanently" there is no evidence that the transcript could not or will not be released at a later, appropriate time.

Conclusion.

"Petitioner is hopeful that review by this Court will clarify the rights of the public to attend criminal trials . . ." (Petition, p. 18). In fact, this Court has already clarified those rights in *Richmond*.

It must also be considered that the instant case involves a *Richmond*-type situation, that is, a discretionary act by the Respondent Court as opposed to a state statute mandating closure as in *Globe*. To be sure, in the latter case, a particular complained-of statute might dictate review, but as to discretionary closures, this Court has previously set forth a clear standard requiring no refinement.

For this reason and the foregoing ones and each of them, Respondent prays that the Petition be denied.

Respectfully submitted,

OFFICE OF GERALD J. GEERLINGS,
County Counsel for the County of Riverside,
By GLENN ROBERT SALTER,
JOYCE ELLEN MANULIS REIKES,
Attorneys for Respondent.